SEEKING A BETTER WAY

A DISCUSSION PAPER ON EMPLOYMENT STANDARDS

Alberta
LABOUR

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INTRODUCTION

When industrialization first began to transform economies throughout the Western world, there were no rules governing the employer-employee relationship. The result — child labour in mines and factories, long hours, unsafe conditions — was unacceptable to societies which valued the individual and the family and which viewed work as a worthy pursuit deserving of fair compensation. Eventually, rules were developed which upheld these values and which acknowledged the important economic role played by both employers and employees. In Alberta, those basic rules are contained in the Employment Standards Code.

Economies throughout the world are once again being transformed, this time by new technologies and global competition. Once again the impact is being felt in the workplace. The nature of work, the way work is organized, the backgrounds and attitudes of workers — all of these factors are changing and affecting the employer-employee relationship. It is time Albertans re-examined our workplace rules and our system for setting and enforcing them to see if they are adequate for the times.

The challenge facing Albertans is to remain competitive without relinquishing our deeply held belief in fair play. The Alberta Department of Labour has given a lot of thought to how we can meet this challenge. Earlier this year our employees gave us their recommendations for change and improvement.

Now we need to hear from you. We need the advice and input of employers, employees and their representatives. We need to hear about your own personal experience and observations. At this point, the discussion is wide open. We are open to all ideas except one — the privatization of the Employment Standards system; this is not an option.

To assist you in examining the issue, we have produced this discussion paper, which provides basic information, questions and options for improvement.

In Part One we look at existing workplace rules and whether they are still appropriate. In Part Two we touch on how workplace rules are set. In Part Three we talk about the issue of enforcement. Finally, in Part Four, we examine ways of improving compliance.

We have invited hundreds of employers and employees to discuss this paper at one-day symposia in Grande Prairie, Edmonton, Red Deer and Calgary. Unfortunately, limits to time, space and financial resources prevent us from inviting everyone. However, all Albertans are encouraged to call or write us with your views. To make it easier, we have provided space in each section of the paper for your comments. We encourage you to fill out the paper and return it to us at: Alberta Labour, Work and Safety Standards, 8th Floor, 10808 - 99th Avenue, Edmonton, Alberta T5K 0G5. Or call us with your comments at (403) 427-8541. If you are calling long distance you may use the government RITE line.

Thank you for your interest and participation. We look forward to hearing from you.

PART ONE – THE RULES OF THE WORKPLACE

In Alberta, basic workplace rules are outlined in the Employment Standards Code. Essentially, the Code sets the rules for hours, payment of wages and terminations. The Code is meant to apply to employers and employees in all provincially regulated industries, which includes everything from restaurants to oil rigs to daycare centres. However, Albertans have started businesses in many different industries, each with its own unique requirements and workplace realities. As a result, people often seek exemptions from parts of the Code. Currently, there are 14 major exemptions and many smaller variances to the Code.

THE EMPLOYMENT STANDARDS CODE AT A GLANCE

The Code sets minimum rules for:

- hours of work
- overtime
- rest periods
- statutory holidays
- vacations
- notice of termination
- maternity and adoption leave
- minimum wage
- employment records
- employment of young persons.

The standards apply to fulltime and part-time workers. Employers may exceed minimum standards.

QUESTIONING OLD ASSUMPTIONS

The Employment Standards Code is based on the assumption that most employees work eight hours a day on a permanent, fulltime basis for one employer. However, the nature of work arrangements is becoming much more varied. In recent years, we have seen a marked increase in part-time, temporary and contract employment.

Do you think current workplace rules adequately address the growing diversity in work arrangements, the economy and in the makeup of the workforce?

The nature of work is becoming more varied as new industries expand and develop in our province. Most of the more than 100,000 new jobs created in the past five years have been in sectors other than oil and gas — industries such as advanced technologies, business services, plastics, petrochemicals, forest products and tourism.

Do you think the Employment Standards Code should cover any other areas of employment in addition to pay, hours and termination? If so, what areas?

Additionally, the workforce itself is becoming more diverse. By the year 2000, every second worker will be a woman. Already, the mass entry of women into the workplace is raising new work and family issues such as daycare and sick leave to care for children. Projections are that most new workers between now and the next century will be women, new immigrants, Natives and persons with disabilities.

Do you think the Employment Standards Code should cover fewer areas of employment? If so, what areas would you eliminate?

Your Comments:

PART TWO – SETTING THE RULES

Currently, the Employment Standards Code is established by provincial legislation.

Public input is provided through MLAs and cabinet Ministers.

The Code is periodically reviewed and amended by the Alberta Legislature. It was last changed in 1988. Specific standards, for example, minimum wage, can be changed by regulation upon the agreement of cabinet.

Civil servants may grant minor variations to the rules. For example, variances have been granted to allow for split shifts in the hotel and restaurant industry.

IS THERE A BETTER WAY OF SETTING STANDARDS?

Employers and employees are interdependent partners. Employers invest time, energy and money into building enterprises that create jobs for other Albertans. Employees invest their knowledge, skill and time in helping employers produce goods and services. As in any partnership, employers and employees have certain obligations toward each other. Employees are expected to do their jobs to the best of their ability. Employers are expected to compensate and treat workers fairly. Partnerships work best when those involved clearly understand and agree with their mutual obligations. Perhaps there is a method for setting standards that would allow direct input from the key workplace partners — employers and employees.

Possible options include:

1. A PROVINCE-WIDE EMPLOYMENT COUNCIL

An Employment Council made up of employees, employers and government representatives could be established to assess and recommend changes to minimum employment standards for the province. Changes would be made through legislation.

Do you think any of these options or combination of options could work?

2. INDUSTRY-SPECIFIC COUNCILS

An Employment Council of employer, employee and government representatives could be established in every industry to assess and recommend changes to standards in their respective industries. Changes would be made through legislation.

What other options would you suggest?

Your Comments:

PART THREE – ENFORCING THE RULES

Setting workplace rules is only half the story. The other half is ensuring rules are followed. Currently, the Employment Standards Code is enforced through a complaint-based system, which costs about $4.5 million a year to operate.

Employees may file a claim with an employment standards officer who investigates. The officer attempts to recover wages on behalf of the employee or to mediate a fair settlement. When mediation fails, the officer may obtain a Court Order to Pay. The employer may appeal the order through an Umpire system involving provincial court judges. Umpire judgements may be appealed to the Court of Queen's Bench.

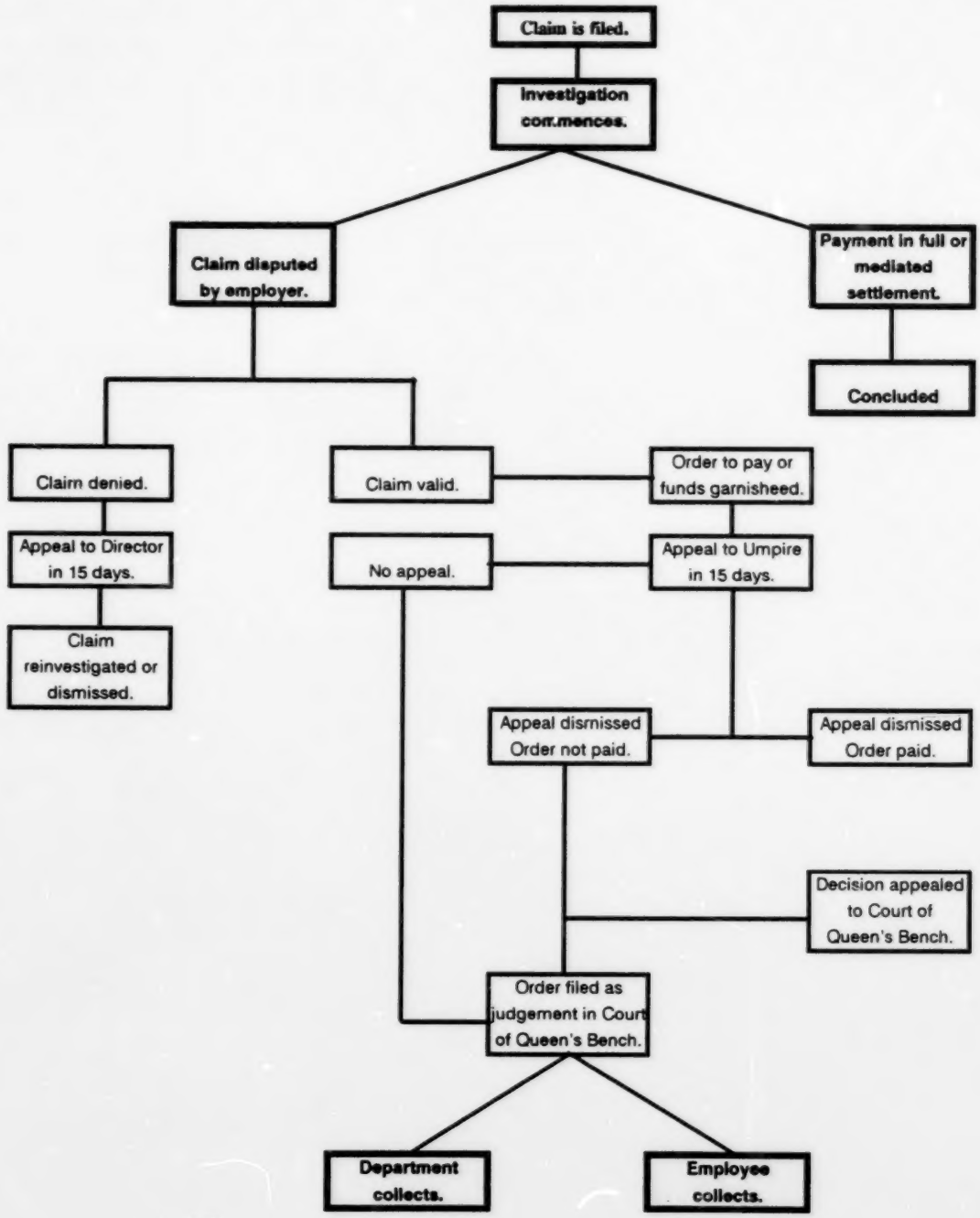
An average of 1,800 claims are under investigation at any given time. Most claims are resolved within 90 days.

Last year the Alberta Department of Labour investigated and resolved about 9, 500 claims. Most claims were filed by employees who had already left the employment relationship for a variety of reasons. The vast majority of claims were about non-payment of wages and most were from the retail, food and accommodation industries.

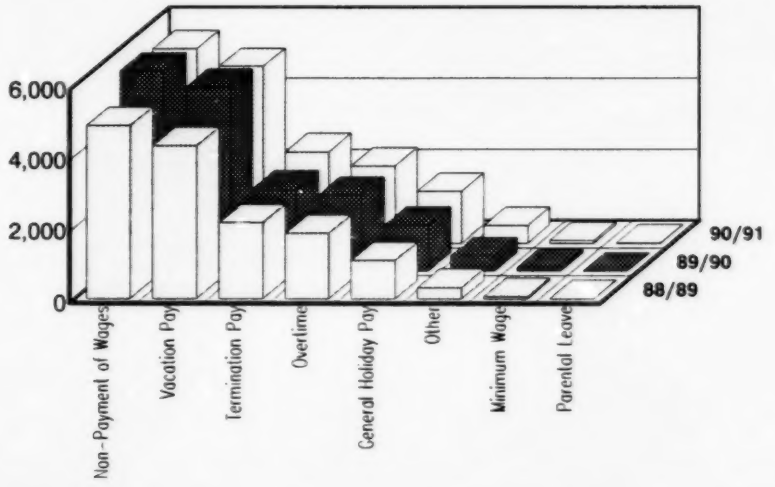
Full payment was obtained or settlements negotiated in more than half the cases. The rest were either referred to the courts, unsubstantiated or unresolved because of bankruptcy. The Department issued 1,923 Orders to Pay, of which 579 were appealed by employers to the Umpire. Employee claims were upheld in 85 per cent of umpire appeals.

The bottom line? Alberta Labour collected a total of $3.4 million on behalf of employees.

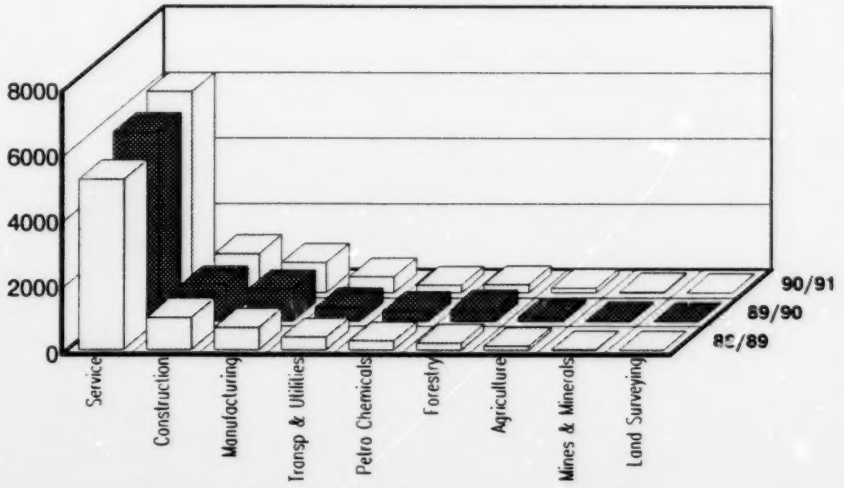
WHAT HAPPENS WHEN YOU MAKE A CLAIM


Claim is filed.
Investigation commences.
Claim disputed by employer.
Payment in full or mediated settlement.
Concluded
Claim denied.
Claim valid.
Order to pay or funds garnisheed.
Appeal to Director in 15 days.
No appeal.
Appeal to Umpire in 15 days.
Claim reinvestigated or dismissed.
Appeal dismissed Order not paid.
Appeal dismissed Order paid.
Decision appealed to Court of Queen's Bench.
Order filed as judgement in Court of Queen's Bench.
Department collects.
Employee collects.

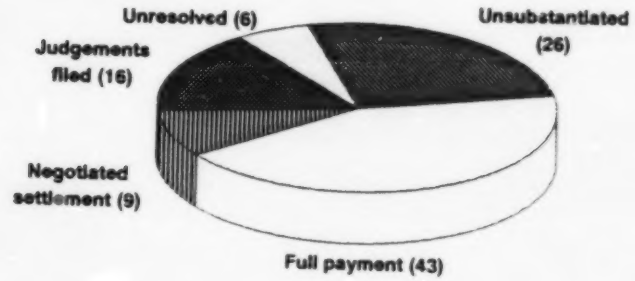
Employment Standards Claims Filed
By Type
1988/89 to 1990/91



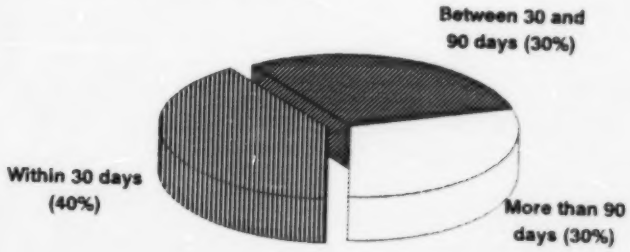
Employment Standards Claims Filed
By Industry
1988/89 to 1990/91



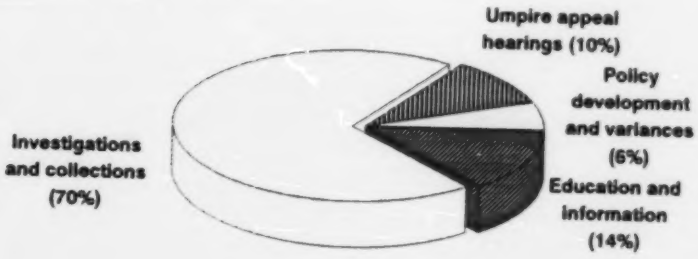
Of each 100 complaints registered:



Time taken to resolve claims:



Resource Allocation


Umpire appeal hearings (10%)
Policy development and variances (6%)
Investigations and collections (70%)
Education and information (14%)

IS THERE A BETTER WAY OF RESOLVING WORKPLACE DISPUTES?

In almost any partnership, disputes arise because of misunderstandings, lack of information, different perceptions, or the breaking of rules by one or both partners.

Do you think either of these options or combination of options could work?

The same is true of the employer-employee relationship. Perhaps there is a method for enforcing workplace rules that would result in speedier, fairer resolutions of disputes — a method in which both partners would come away feeling they had been heard and treated fairly.

What other options would you suggest?

Possible options include:

Your Comments:

1. AN EMPLOYMENT STANDARDS CLAIMS "COURT"

A system similar to a small claims court could be established to hear employer-employee disputes over workplace rules. The employee could file a claim. The employer and employee would appear before an adjudicator who would render a binding decision. Appeals could be handled either through an industry council or the courts.

2. INDUSTRY-SPECIFIC DISPUTE RESOLUTION COUNCILS

Councils could be established in each industry to hear disputes and render binding decisions. Appeals could be handled through the courts.

PART FOUR – COMPLYING WITH THE RULES

Regardless of the system for enforcement, several things can be done to improve compliance and to prevent abuse from occurring in the first place.

Most employers and employees will abide by workplace rules provided they know what they are. A relatively small percentage of employers and employees deliberately abuse the employment standards system. Perhaps there is a way to better inform employers and employees about workplace rules and to more actively discourage the small percentage of people who knowingly break the rules.

Do you think any of these six options or combination of options could work?

Possible options include:

What other options would you suggest?

Your Comments:

1. EMPLOYMENT CONTRACTS

Employers and employees could be required to sign individual contracts of employment clearly spelling out specific terms and conditions of employment, which would have to meet or exceed Code requirements. Most employers already use an application form which could be adapted to serve this purpose.

2. PENALTIES

Violators could be charged a fee in addition to an Order for payment of wages owed employees. The Department could step up its prosecution of repeat offenders. Fines could be heavy and put into an Unsatisfied Judgement Fund. The fund could be used to pay valid employee claims in cases where employers fail to pay.

Your Comments (cont'd):

3. EDUCATION

Employers who repeatedly violate the rules could be required to attend employment standards seminars.

4. INCENTIVES TO SETTLE

A fee could be levied for appeals. Employers could be charged the administrative costs of resolving a valid complaint. Quick resolution would result in lower costs for the employer.

5. DISINCENTIVES TO ABUSING THE SYSTEM

Employees earning above a certain income could be charged a small fee for wage recovery services. A small fee would discourage frivolous claims.

Similarly, those able to afford it could be charged for materials or special services such as record searches.

6. ENCOURAGING EMPLOYEES TO USE OTHER AVAILABLE AVENUES

Unionized employees could be required to resolve disputes through processes provided for in their collective agreement.

High income earners could be required or at least encouraged to use available civil court remedies.

CONCLUSION

We have attempted to provide an overview of issues and options facing Albertans in the employment standards area.

Have we overlooked any key points or issues?

Do you have other general comments or observations?

WHAT IS THE NEXT STEP?

Your comments will assist us in determining what improvements and changes are needed in the employment standards area.

Our objective is to ensure Alberta's Employment Standards Code and system for setting and enforcing workplace rules continue to reflect Albertans' belief in the values of fair play and hard work.

Again, thank you for your interest and participation.